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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/929,359	08/15/2001	Tomaru Ogawa	50195-267	8872

7590

02/09/2004

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600 13th Street, N.W.
Washington, DC 20005-3096

EXAMINER

DOVE, TRACY MAE

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 02/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/929,359

Applicant(s)

OGAWA ET AL. 

Examiner

Tracy Dove

Art Unit

1745

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): 35 U.S.C. 112, 2nd, rejection of claims 17 and 18.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-14 and 17-22.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☒ Other: See Continuation Sheet

Continuation of 10. Other: Regarding Applicant's arguments, the range of x of the instant claims ($0.2 < x$ or $0.2 < x < 0.5$) is encompassed by the range for x disclosed by Dahn ($0 < x < 0.5$). Note the value of x in Dahn cannot be a negative value because Dahn discloses a layered lithium manganese oxide, which teaches lithium is present in the layered material. Thus since the instant invention and Dahn teach the same materials, both materials would have the same properties (BOP values). Applicant's argument that the lithium manganese oxide of the instant claims and the lithium manganese oxide of Dahn do not have the same BOP values is not persuasive because the two lithium manganese oxide materials are the same. Applicant argues the BOP value becomes higher when x is more than 0.5, however, Dahn teaches x is $0 < x < 0.5$. Thus, it is unclear how this argument applies to the rejection in view of Dahn. Examiner points out that unexpected results must distinguish the claimed invention over the prior art of record.


Patrick Ryan
Supervisory Patent Examiner
Technology Center 1700